Supreme Court, U.S.
FILED

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In The
Supreme Court of the United States
October Term 1997

THE ESTATE OF ELVA MAE CHAMBERS
JACKIE LOU PROPST, individually
And as representative of the
ESTATE OF ELVA MAE CHAMBERS, deceased
JACKIE LOU PROPST, INDIVIDUALLY

V.

DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER AND DR. KYLE JAMES

PETITION FOR WRIT OF CERTIORARI

JACKIE LOU PROPST
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Why do Respondents and the Courts insist Petitioner did not respond to Doctors' Summary Judgment when Petitioner's response to Doctor's Motion for Summary Judgment was already on file in accordance with local rule 2.6 and is also in the Court Record page 253 and page 263, and on page 3 of Petitioner's Reply Brief?

Why wasn't Petitioner, Pro Se given the eighteen months to bring her Multi-party case to trial as dictated by Tyler local rule 1.3 instead of given only eight months before being Summary Judgment out?

Why would the Trial Court grant Summary Judgment in a medical malpractice case after reading their sworn documents and seeing that the affidavits were inconsistent with the medical records?

Why won't the Courts and Respondents understand that Petitioner could not produce evidence needed at the time of Summary Judgment because knowledge of the facts was acquired after the trial, the exhumation of Mrs. Chamber's body, but still in the Trial Court's jurisdiction?

There are no Constitutional Rights to a Trial by Jury in a Civil Court. Does a Petitioner have any Civil or Personal Rights to a Trial by Jury in a Civil Court?

If the Courts and Respondents believe Petitioner is wrong, why didn't they go to trial and prove Petitioner wrong?

Why would the Court of Appeals chastise Petitioner for saying the Trial Court abused its discretion when Petitioner provided an affidavit of a witness and notes of instruction form Respondents' attorney, Mr. McSwane?

Petitioner did not ask for special treatment because she is not an attorney. Petitioner did want to be treated fairly. That was not too much to expect was it?

A person is robbed of his/her Civil Liberties when he or she tries to take a case to Court Pro se and his/her work not given the same consideration as an attorney. Is their protection for a Pro se?

How can a summary judgment be granted in a medical malpractice case without allowing evidence from the Petitioner to be entered into the record for jury consideration?

Why haven't the Courts read any of Petitioner's research and Documents?

What law governs the extent to which doctor's can use patients for study in class demonstration without the patient's consent?

Petitioner requested a Trial by Jury and paid her fee, what is the purpose of this rule if the Court decides who goes to trial and who does not?

PARTIES TO PROCEEDING

PETITIONER

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ELVA MAE CHAMBERS
JACKIE LOU PROPST, individually
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ESTATE OF ELVA MAE
CHAMBERS, deceased

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Trial Court order granting Summary Judgment and Severance to Dr.s' Kingry, Shafer, George, and Sanfelippo-
Order, Appendix C.

Trial Court accepted motion for Summary Judgment and granted it with the wrong case number, wrong defendant, and wrong plaintiff
Order, Appendix D

Trial Court order granting Motion for Summary Judgment and Severance for Dr. James.
Order, Appendix E

Trial Court order denying Motion for Rehearing. Copy of decision appears at
Order, Appendix F

The Supreme Court of Texas denies application for Writ of Error with notation, "Writ Denied". Order appears in
Order, Appendix G

The Supreme Court of Texas granted an Extension of Time to file Motion for Rehearing was granted.
Opinion and Order, Appendix H

The Supreme Court of Texas overruling motions for rehearing.
Opinion and Order, Appendix I

Abuse of Discretion by Trial Court
Order, Appendix J

JURISDICTION

The Twelfth Court of Appeals denied Writ of error on December 30, 1996. A copy of the decision appears in
Appendix A.

The Twelfth Court of Appeals overruled Motion for Rehearing January 29, 1997. Appendix B.

Trial Court Order granting Summary Judgment and Severance for Dr. Kingry, Dr. George, Dr. Shafer, and Dr. Sanfelippo January 31, 1995 Appendix C. (1-31-95)

Trial Court orders granting Motion for Summary Judgment and Severance for Dr. James. February 1, 1995. A copy of the decision appears in Appendix D.

Trial Court order denying Motion for Rehearing was signed January 31, 1995. A copy of that decision appears at
Appendix E.

The Supreme Court of Texas granted an extension of time to file Motion for Rehearing on September 2, 1997. A copy of the decision appears in
Appendix G.

The Supreme Court of Texas denied petition for Motion for Rehearing on September 25, 1997. A copy of the order overruling Motion appears at
Appendix H.

The jurisdiction of this Court is invoked under 28 U.S.C. 1257 (a).

STATEMENT OF CASE

Elva Mae Chambers was at U. T. Health Science Center (15) fifteen days prior to March 13, 1992 to see Dr. George. Test was performed and she was later released to return home. March 13, 1992 she returned to the hospital as an emergency patient. Mrs. Chambers had all the symptoms of an aneurysm according to the ambulance and medical reports. There were delays in getting the CT completed. There were no medical records and her X-rays could not be located. Medical records from Mother Francis Hospital had never been requested. There was a delay in diagnosing her illness and giving proper treatment. A delay of fourteen (14) hours.

Complications in surgery, prolonged pump time, 5-7 min., which created more complications and also putting her at high risk. (She had been sedated an hour and a half before surgery). Dr. Kingry wanted to use her to demonstrate a Debaky type A Dissection Repair for his 4:00 p.m. class, which consisted of 23 students. Mrs. Chambers began bleeding uncontrollably during surgery. The dissection was repaired but the cause of the problem was never addressed. Without replacing the left ventricular valve, she would continue to bleed. Dr. Kingry closed Mrs. Chambers and went home. He never returned. Excessive hemorrhaging continued. Mrs. Chambers never regained consciousness. Dr. Peerwani, forensic expert, performed an autopsy. It was determined that Mrs. Chambers bled to death.

Petitioner filed notice of a lawsuit and then filed the original petition on May 13, 1994. Petitioner could not get an attorney because there had not been an autopsy and it had been almost two years since her death. Petitioner continued to work the case until arrangements could be made to exhume the body, gather the evidence as well as an expert witness and secure an attorney. It was difficult since Petitioner works in a field that is unrelated to law and medicine.

A hearing for Summary Judgment was in August of 1994. Judge Patteson overruled it. The second notice of Summary Judgement was an "ambush". Petitioner did not know that if the Court did not want this case to go to court, it wouldn't. The Trial Court granted summary judgment and severed the doctors out of the

Original law suit. It is necessary that some matter of fact be Ascertained, such as where the evidence was not fully developed on a point. Rule 434, Vernon's Ann. Rules Civ.Proc. Petitioner filed a Motion to reinstate and a Motion for Rehearing letting it be known to the Court what she planned to do. Petitioner informed the Court that she had to have more time to complete discovery. When the trial court granted summary judgment in the medical malpractice case it left Petitioner with an incomplete case for an appeal. Reversible error means that the error complained of amounts to denial of rights of the petitioner of such a nature or extent that the error was (1) reasonably calculated to cause and (2) probably did cause the rendition of an improper judgment in the case. Reversible error also includes error of such a nature or extent that it probably prevented the petitioner from making proper presentation of her case to the Appellate Courts. (T.R.A.P. 184(b)). Scurlock Oil Co. V. Smithwick 724 S.W.2d 1, 3-4 (Tex. 1986) Petitioner appealed to the Twelfth Court of Appeals and filed her brief. One hundred fifteen days later, respondents filed their briefs. Court of Appeals denied writ of error. The Supreme Court of Texas granted Motion for Extension of Time to File Motion for Rehearing. The Supreme Court denied rehearing.

When the error complained of is the failure to admit admissible evidence the complaining party must establish not only that the error was probably prejudicial (Texas Power and Light Co. v. Hering 148 Tex. 350 224 S.W.2d 191 192 (1949) but also that in all reasonable probability the finder of fact would have made different finding if the finder had had the benefit of the excluded evidence. City of Austin v. Capitol Livestock Action Co. 434 S.W.2d 423 433(Civ. App.-Austin 1968) rev'd on other grounds 453 S.W.2d 461 (Tex. 1970).

Justice Charles Holcomb delivered the Judgment for the Twelfth Court of Appeals. It is apparent that he did not read the transcript or any material pertaining to this case.

Justice Holcomb states in his judgment on page 2 paragraph 1 and again on page 4 paragraph 3 that Petitioner did not respond to Dr. Kingry Defendants' motion for summary judgment. This is not true. In the transcript of this case page 253 is Petitioner's response to Dr. Kingry Defendants. In the response Petitioner asked

The Court to: (1) that summary judgment be reseinded (2) Case not be severed (3) Asked the Court to consider all of the evidence (4) Set a date for oral argument.

Justice Holcomb quoted Tex. R. APP P. 52(a) "In order to preserve for appellate court party must by objection or motion state the ruling he desired the court to make." Again in the transcript page 263 (1) Petitioner prays the court will grant a continuance (2) Prays court will reinstate (3) Grant oral argument (allow depositions to be taken and discovery made) (5) To be treated like others/felt like rights had been violated. Justice Holcomb continues that Petitioner did not produce evidence to contradict doctors' own expert testimony. Petitioner did pray the court for time to develop her case. Rule 1.3 of the local rules of Tyler Smith County Texas clearly states: Multi-party or complex litigation eighteen (18) months from appearance date to present their case. The court did not act on their own rules. If the law had applied in Petitioner's case, Petitioner's case would have been ready for trial.

Justice Holcomb quotes T.R.C.P. 166© A summary judgment may be based on uncontroverted testimonial evidence of an interested witness or of an expert witness as to subject matter concerning which the trier of fact must be guided solely by the opinion testimony of experts if the evidence is clear positive and direct otherwise credible and free from contradictions and inconsistencies and could have been readily controverted. In the transcript page 240 Petitioner tells the court about the inconstancies and contradictions of the doctors' affidavits. Her proof is the medical records their sworn interrogatories and their contradictions in their affidavits among themselves. An expert witness is not needed to interrupt their affidavits.

Dr. Kingry stated in his interrogatories that there was never any excessive bleeding. Dr. Peerwani, forensic expert determined the cause of death was that that Mrs. Chambers bled to death. Dr. James attending Mrs. Chambers during the first forty-eight (48) hours stated in sworn affidavit "I specifically deny that I was negligent in failing to take any steps to help Mrs. Chambers. Chambers inlight of severe hemorrhaging."

Dr. Kingry stated in sworn statements that there were no Complications. Dr. Roy Wilson, the anesthesiologist wrote in his

Progress report: "aortic dissection repair prolonged pump time high risk. Patient without oxygen 5-7 minute. Review with Kingry all the defendants agree that there were no complications. Dr. Roy Wilson wrote on his anesthesia evaluation sheet: "patent died from complications of 1"dissection and not from complications of anesthetic. Dr. Kingry continued to state, "when I saw her at approximately...." Dr. Kingry never came back to the hospital. All instructions were given over the phone. Dr. George states in his affidavit used as summary judgment evidence:" When I say her at 8:15, she recounted her history and noted she had complained of severe sub-sternal chest, abdominal and back pain. She was complaining of shortness of breath, nausea and sweating." (That is on page 3) On page 4 of the same affidavit used as summary judgment evidence, Dr. George states: "My initial assessment indicated that her diagnosis was extremely difficult since her complaint was non-specific." Dr. George contradicts himself in his own summary judgment evidence. The doctors' affidavits according to T.R.C.P. 166 © should be void. They are not, according to the rule, clear, positive, and direct. They do have contradictions and certainly are full of inconsistencies and are not credible. Summary judgment should have never been granted. Justice Holcomb stated that Petitioner had not let it be known to the Court the objection, proof, or intentions.

Tex. R. Civ. P.21 (a). "In order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion stating the specific grounds for the ruling he desired the court to make..." Petitioner charges are in the Transcript, page 240-248. An affidavit was filed. Fact issues were presented according to the Tex. R. Civ. P.21 (a).
Dr. Kingry does not disclose his premeditated reasons for waiting until 4:00 p.m. to do his emergency surgery. Mrs. Chambers waited fourteen (14) hours before Dr. Kingry's class could assemble. He used Mrs. Chambers for a class demonstration, without her consent, Twenty-three (23) people watched the surgery. The lateness in treatment was planned and it cost Mrs. Chamber's her life

It is not, however, sufficient for an expert to state that he knew the standard of care and concluded that such standard was met.

Chopra v. Hawryluk, 892 S.W.2d 229,233 (Tex. App.-El Paso 1995, writ denied). This is exactly what Dr. Sanfellipo does. Transcript page 204. Dr. Shafer (page 4 and 5 in the Transcript-Affidavit for summary judgment) says the same thing, but he also states time would not have made a difference.

After the exhumation of Mrs. Chambers' body, more evidence was revealed. All of the above was presented to the trial court. Summary judgment should never been granted using the doctors' sworn affidavits. They do not meet Texas Rules of Civil Procedure.

Justice Holcomb did not feel Petitioner had ground to claim the trial court abused its discretion.

Inequity on appeal from denial of motion for reinstatement based on newly discovered evidence is not whether, upon evidence in record, it apparently might have been proper to grant application in particular case, but where refusal of new trial has involved violation of clear legal right or a manifest abuse of judicial discretion. Texas Emp. Ins. Ass'n. v. Waldon, 392 S.W.2d 509, ref. n.r.e.

Petitioner presented affidavit form a witness who heard the comment outside the Courts' door and witnessed the no reaction from the Court. The comment being: "I've never seen a Pro se get to court yet."

The Trial Court abuses its discretion when its decision is so clearly wrong as to lie outside that zone within which reasonable persons might agree. Williams v. State (App. 1 Dist. 1996) 916 S.W.2d 53.

Notes of communication between the Trial Court and Mr. McSwane, attorney for Defendants, instructing how to handle the case. Evidence of motive tending to prove comm' sion of offense. Cox v. State (App 2 Dist. 1996) S.W.2d 349, review granted.

REASONS FOR GRANTING WRIT

The United States Supreme Court should grant this writ in the name of fairness and justice. It is the moral thing to do. The Kingry Respondents', known as Dr. Kingry, Dr. George, Dr. Shafer and Dr. Sanfelippo crossed the line of principles when they used Mrs. Chambers as a live cadaver for demonstration purposes. The University of Texas Health Science Center in Tyler, Texas is a research center. The Kingry Respondents' thought they could get away with this horrendous act of no mercy and they just about have unless this court allow this case to be heard. This case could be a monumental step in realizing the potential harm that comes to patients who go to state institutions believing their in the best hands for medical treatment. In reality, research institutions and their staff must be reminded that there are moral principles that all must live by.

Dr. Kingry had six (6) law suits in 1992 for medical malpractice. One of the largest was settled out of court. The doctors have gotten so versed in covering for the hospital and each other that the entire situation reads like a "horror" story.

Petitioner wanted to believe that Mrs. Chambers had received the best care possible. The conclusion after reading her medical records and research at Texas Southwestern Medical School proved the opposite.

In the beginning lawyers for the doctors bombarded Petitioner with stacks of interrogatories and request for production of documents. Petitioner completed their request, and countered with the same. The Lawyers for the doctors did not expect to have to answer Pro. se. They filed for summary judgment in August 1994. It was denied. Lawyers had to answer had to answer interrogatories and production of documents. In January 1995 the Trial Court was replaced. Within two weeks of ascending to the Civil Trial Bench, Petitioner was "summary judgment out. Petitioner does not feel that the new court had the time to read and understand this cause in order to pass judgment. The court is not a doctor. The court went with affidavits presented by the Kingry Defendants. The affidavits are fabricated. Without any medical background or a study of the medical records, the affidavits look like summary judgment material.

This is why this case must be heard in court with a jury. There must be authoritative documentation and testimony to compare with the Kingry Defendants' claims. This is a medical malpractice lawsuit that cost a woman her life because some doctors got carried away with themselves and went so far as to condemn their patient to death.

Summary judgment was presented to Petitioner in an unusual manner of form. Petitioner did not realize at he time how damaging it would be and this is what the attorney for the doctors were counting on. The judgment requested a hearing (just like the hearing request in August 1994) but in the middle was the submission date. Petitioner waited for a notice from the court for a hearing, gathering evidence and coordination material for the hearing. Once notified that summary judgment had been granted Petitioner did respond as pointed out in Petitioners Statement of the Case. The Respondents' and the Courts still refer to, "Propst did not present any evidence, Propst did not answer, etc." Is any one reading anything outside the doctors affidavits used as summary judgment? Again, it is a cover up a travesty of the justice system.

If the Trial Court had gone by local rules, Petitioners' case would have been ready for trial before the eighteen months were up.

Supreme Court's opinion in Missouri-K-T Ry. v. Evans, 151 Tex. 340, 250 S.W.2d 385 and the authorities there collated under Par. 11, p.393:

(1) Knowledge of the facts was acquired after trial

(2) There was no lack of diligence of plaintiff's part in failing to ascertain the facts prior to trial.

(3) That such facts and evidence are material and would probably change the verdict upon another trial. Moreover we feel that justice will be better served by giving the jury the benefit of such evidence. The cause is reversed and remanded.

The Trial Court and the Court of Appeals erred by failing to order a new trial because summary judgment was based upon factually insufficient affidavits of Dr. George, Dr. Sanfelippo, Dr. Kingry, Dr. Shafer, and Dr. James. Their summary judgment affidavits should be made void for it had been show and proven with documentation that they are not clear, positive, and direct, otherwise totally non-credible nor free from contradiction and inconsistencies and have been

controverted. Therefore, Respondents cannot rely on TEX.R.CIV.P. 166a (c) for relief, nor Nixon, 690 S.W.2d at 548-49. The fact that (1) the physician owed a duty to Mrs. Chambers to act according to a certain standard of care, (2) a breach of the applicable standard of care, (3) an injury, (4) a casual connection between the breach of the standard of care and the injury have all been proven with medical records, and the Kingry Defendants' own expert testimony. Petitioner agrees that in medical malpractice cases, both negligence and proximate causation must be proven by expert testimony. Dr. Peerwani has already refuteated Dr. Kingry's testimony. Mrs. Chambers bled to death. The doctor's summary judgment evidence was fabricated affidavits. If Petitioner is wrong, why have the Texas Courts and the accused doctors done everything to keep this case out of the courts

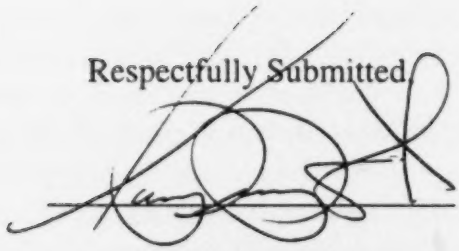
The U.T. Health Science Center in Tyler, Texas and the accused doctors have deliberately omitted facts in hopes of covering up this tragedy. The United States Supreme Court is the last hope of exposing what has been taking place at the U.T. Health Science Center

This medical malpractice lawsuit could send a warning to doctors engaging in research at state institutions. There are limits within moral principles that must be upheld. The message must be, "If there was any substantial possibility of survival and the defendant has destroyed it, he is answerable." Hicks v. United States, 368 F.2d 626 (4th Cir. 1966).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully Submitted,



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THE STATE OF TEXAS
COURT OF APPEALS
TWELFTH COURT OF APPEALS
DISTRICT OF TEXAS
JUDGMENT

DECEMBER 30, 1996

NO. 12-95-000-55-CV

JACKIE LOU PROPST, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ELVA MAE CHAMBERS
Apellant
V.
DR. ROY KINGRY, ET AL,
Appellee

Appeal from the County Court at Law Court
of Smith County, Texas. (Tr.Ct.No. 94-9711-E)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being inspected, it is the opinion of this Court that there was no reversible error in the trial court's judgment.

It is therefore ORDERED, ADJUDGED and DECREED that the judgment of the court below is **in all things affirmed**. It is FURTHER ORDERED that Appellant, Jackie L. Propst, as surety, pay all costs incurred by reason of this appeal; and that this decision be cerified to the court below for observance.

Charles Holcomb, Justice[3]

(APPENDIX A)

[3]Panel consisted of C.J. Holcomb,J., and Hadden, J. Ramey, Jr., C.J., not participating.

NO. 12-95-00055-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

JACKIE LOU PROPST, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ELVA MAE CHAMBERS, APPELLANT	**& APPEAL FROM THE**
V.	**& COUNTY COURT OF LAW**
DR. ROY KINGRY, ET AL, APPELLEE	**& SMITH COUNTY, TEXAS**

Jackie L. Propst, Individually and as Representative of the Estate of Elva Mae Chambers, Deceased ("Propst"), Appellant, appeals the trial court's grant of a summary judgment in a medical malpractice case. Propst generally alleges in eleven points of error that the trial court erred in rendering summary judgment, in refusing to reinstate her case following summary judgment, in awarding costs to Appellee, and in not making findings of fact and conclusions of law when requested. We will **affirm**.

Propst is the daughter of Elva Mae Chambers ("Chambers"). On, March 13, 1992, Chambers awoke with severe chest pain, nausea and vomiting. She was admitted to the University of Texas Health Center at Tyler (the "hospital"). Chambers was approximately 70 years old when admitted. Dr. Shafer, the internist on call, examined Chambers at the time of her admission to the hospital. Dr. Shafer took Chambers' medical history and performed a physical examination. Dr. Shafer formulated a plan of testing and treatment I order to diagnose Chambers' condition. Thereafter, Dr.

Shafer transferred Chambers' care to Dr. George, who had previously treated her. Dr. George received Chambers' test results, which revealed that Chambers suffered from an aortic dissection. Because surgery was indicated, Dr. George consulted Dr. Kingry, a surgeon. Dr. Kingry determined that Chambers needed emergency surgery to correct the dissection. Dr. Kingry performed the surgery with the assistance of Dr. Sanfelippo. The surgeons successfully repaired the dissection, and Chambers showed initial signs of recovery. Shortly thereafter, Chambers' blood failed to clot. Although Chambers was treated, her condition worsened. Chambers sustained a heart attack, and Dr. James resuscitated her several times before pronouncing her dead at 6:32 p.m. on March 15, 1992. The cause of death was identified as a heart attack due to weakened condition, age, renal problems, cardiac stress and low cardiac output.

On, May 13, 1994, Propst filed suit against Drs. Shafer, George, Kingry, Sanfelippo, and James, as well as other various medical personnel involved in Chambers' treatment during her hospitalization. On December 27, 1994, Drs. Shafer, George, Kingry, and Sanfelippo ("the Kingry Defendants") moved for summary judgment on the grounds that no material fact issue existed regarding a breach of duty or causation. On January 5, 1995, Dr. James moved for summary judgment on similar grounds. Propst responded to Dr. James' motion, but did not provide any controverting expert testimony. Propst did not respond at all to the motion of Kingry Defendants. The trial court granted summary judgments to both the Kingry Defendants and Dr. James and severed Propst's remaining claims in a separate cause number. Propst appeals the trial court's summary judgment orders.

In her second, third, tenth and eleventh points of error, Propst alleges that the trial court erred in granting summary judgment because the defendants failed to meet their burdens of proof. Specifically, Propst contends that the affidavits of Drs. George and Sanfelippo contained insufficient, conclusory opinion testimony regarding the standard of care and that Dr. George's affidavit was not clear, positive and direct. We will address each of Propst's claims in turn.

An appellate court reviews the grant of summary judgment to determine whether the proof establishes as a matter of law that there is no genuine issue of material facto as to one or more of the essential elements of the plaintiff's cause of action. ***Gibbs v.***

General Motors Corp., 450 S.W.2d 827, 828 (1970). The movant has the burden to prove that there is no genuine issue of material fact and that he is entitled to summary judgment as a matter of law. TEX. R. CIV. P. 166a©; ***Nixon v. Mr. Property Management Co.***, 690 S.W.2d 546, 548 (Tex.1985). In reviewing a summary judgment, the appellate court must take all evidence favorable to the nonmovant as true, resolve any doubts in the non-movant's favor, and indulge every reasonable inference in favor of the non-movant. ***Nixon***, 690 S.W.2d at 548-49. When the trier of fact must base its decisions solely on the opinion testimony of an expert, a summary judgement may be based upon uncontroverted testimonial evidence of an interested expert witness if the evidence is clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. TEX. R. CIV.P. 166a©; ***Anderson v. Snider***, 808 S.W.2d 54, 55 (Tex. 1991). If an interested expert witness presents legally sufficient evidence to support a summary judgment, the non-movant must produce other expert testimony to controvert the movant's summary judgment evidence. ***Anderson***, 808 S.W.2d at 55. On a matter, which requires expert testimony, lay testimony is insufficient to refute an expert's testimony. ***Id***.

"In a medical malpractice case, the plaintiff must prove, by competent testimony, that the defendant's negligence proximately caused the plaintiff's injury." ***Duff v. Yelin***, 751 S.W.2d 175, 176 (Tex. 1988). Specifically, the plaintiff must prove the following: 1) that the physician owed a duty to the plaintiff to act according to a certain standard of care, 2) a breach of the applicable standard of care, 3) an injury, and 4) a causal connection between the breach of the standard of care and the injury. ***Elam v. Yale Clinic***, 783 S.W.2d 638, 642 (Tex. App.-Houston [14th Dist.] 1992, no writ). In medical malpractice cases both negligence and proximate causation must proven by expert testimony. Rinando v. Stern 831 S.W.2d 459 462 (Tex. App. –Houston (14 Dist.) 1992 no writ). It is not, however, sufficient for an expert to state that he knew the standard of care and conclude that such standard was met. ***Chopra v. Hawryluk***, 892 S.W.2d 229, 233 (Tex. App.-El Paso 1995, writ denied). Rather, the expert must state what the standard of care was and explain how the defendant's acts conformed to the standard of care. ***Id***

As summary judgment evidence, each defendant doctor presented his own affidavit to negate Propst's elements of breach of

duty and proximate causation in her action for malpractice. In each affidavit, the doctor described his medical training and experience. The doctors' affidavits provided a detailed account of the care each doctor rendered to Chamber. Each doctor also stated that he was familiar with the applicable standard of care for patients such as Chambers and specifically set out that standard of care. Further, each doctor outlined the care he actually provided for Chambers, and how such care conformed to the accepted standard of care.

In addition to her general allegations, Propst specifically complains that Dr. Sanfelippo's affidavit was conclusory. In support of her allegations, Propst cites ***Gonzales v. Outlar***, 829 s.W.2d 931 (Tex. App.-Corpus Christi 1992, writ denied) and ***Hammonds v. Thomas***, 770 S.W.2d 1 (Tex. App.-Texarkana 1989, no writ). However, in each of those cases, the defendant physician merely stated that he was familiar with the standard of care and complied with such standard. Dr. Sanfelippo's affidavit is much more detailed. He described in some detail his qualifications and familiarity with the standard of care for an assisting thoracic surgeon. He stated specifically what actions he should have taken during Chambers' surgery and that he performed those duties. We hold that Dr. Sanfelippo's affidavit presented sufficient evidence to prove that Dr. Sanfelippo neither neither breached the applicable standard of care nor proximately caused Chambers' death.

Propst also contends that Dr. George's affidavit was conclusory and was not clear, positive and direct so as to support summary judgment in his favor. In his affidavit, Dr. George specifically described some of the problems in diagnosing Chambers' difficulty. Chambers complained of non-specific pain that could have been of cardiac, gastrointestinal or musculoskeletal in origin. Dr. George described in detail the standard of are for diagnosing a patient with Chambers' symptoms. Further, he described how he complied with that standard of care and stated that his actions did not proximately cause Chambers' death.

Because the defendant physicians presented legally sufficient evidence entitling them to judgment as a matter of law, the burden then shifted to Propst to produce summary judgment evidence sufficient to raise a fact issue on the challenged elements of her cause of action. This she failed to do. Propst filed a response opposing James' summary judgment motion. However, Propst did not present any expert testimony to create a fact on the issues of

breach of the standard of care and proximate causation. Propst did not respond at all the motion of the Kingry Defendants. We therefore overrule Propst's second, third, tenth, and eleventh points of error.

In her fifth point of error, Propst alleges that the trial court erred in granting the motions of Drs. Kingry, Shafer, and James because those physicians deliberately omitted facts regarding the standard of care and Chambers' condition from their sworn affidavits.

"Issues not presented to the trial court by written motion, answer or other response shall not be considered on appeal as grounds for reversal." TEX.R.CIV.P. 166a©. Further, proof in a summary judgment context is generally made by affidavit. TEX.R.CIV.P. 166a©, (f). A motion for summary judgment, even if verified, is not summary judgment evidence. ***Kendall v. Whataburger, Inc.,*** 759 S.W.2d 751, 754 (Tex. App.-Houston [1st Dist.] 1988, no writ).

Propst describes at length the "facts" surrounding Chambers' death. However, Propst did no submit these "facts" to the trial court in the form of a sworn affidavit or other competent summary judgment evidence. Therefore, this Court does not consider the alleged facts for any purpose. We therefore overrule Propst's fifth point of error.

In her sixth point of error, Propst complains that the trial court abused its discretion when it granted costs to the defendant physicians because no cost amount was submitted. We disagree.

"The successful party to a suit shall recover of his adversary all costs incurred therein, except where otherwise provided." TEX.R.CIV.P. 131. Further, the trial court may not assess costs other than as provided by Rule 131 except for good cause shown. ***Dover Elevator Co. v. Servellon***, 876 S.W.2d 166, 169 (Tex. App.-Dallas 1993, no writ). A party who prevails on a summary judgment motion is entitled to receive its costs. ***Southerland v. Northeast Datsun, Inc.***, 659 S.W.2d 889, 893 (Tex. App.-El Paso 1983, no writ). "[C]osts usually refer to '[f]ees and charges required by law to be paid to the courts or some of their officers, the amount of which is fixed by statue or the court's rules; e.g., filing and service fees.'" ***Westech Eng'g, Inc. v. Clearwater Constructors, Inc.***, 835 S.W.2d 190, 206 (Tex. App-Austin 1992, no writ) (quoting BLACK'S LAW DICTIONARY 312 (5th ed. 1979)). Finally, it is customary for the

judgment not to recite the amount of costs, but rather the party against whom the costs are awarded.

Because the Kingry Defendants and Dr. James were prevailing parties, the trial court did not err in awarding them costs. The Kingry Defendants and Dr. James prevailed on all issues by obtaining final summary judgments. There was no evidence that good cause existed to award costs according to any method except that stated in Rule 131. We therefore overrule Propst's sixth point of error.

In her eighth point of error, Propst alleges that the trial court erred by not rendering findings of fact and conclusions of law as requested. We disagree.

Findings of fact are inappropriate following the grant of a summary judgment. ***Linwood v. NCNB of Texas***, 885 S.W.2d 102, 103 (Tex. 1994). A party is entitled to findings of fact and conclusions of law in a case tried without a jury. TEX.R.APP. P.41; TEX.R.CIV. P. 296. However, a summary judgment proceeding is not a trial within the context of such rules. ***Chavez v. Housing Auth. of El Paso***, 897 S.W.2d 523, 525-26 (Tex. App.-El Paso 1995, writ denied).

Propst was not entitled to findings of fact and conclusions of law. The Kingry Defendants and Dr. James prevailed on summary judgment motions. The summary judgment proceeding did not constitute a trial. Therefore, the trial court did not err in refusing to file findings of fact and conclusions of law. We therefore overrule Propst's eighth point of error.

In her ninth point of error, Propst contends that the trial court erred in considering the Kingry Defendant's summary judgment motions because a party of attorney of record did not sign the certificate of service. We disagree.

The Kingry Defendants filed their motion for summary judgment on December 27, 1994. The motion contained a submission date in compliance with the Local Rules of the County Court at Law of Smith County. The Kingry Defendants' attorney of record signed the motion for summary judgment, but another individual signed the certificate of service. Propst admits receiving the Kingry Defendants' motion, but states that she was waiting for the court to advise her of the date the hearing on the motion.

Every notice required by these rules, and every

> pleading, plea, motion, or other form of request required to be served under Rule 21...may be served by delivering a copy to the party to be served, or the party's duly authorized agent or attorney of record....The party or attorney of record shall certify to the court compliance with this rule in writing over signature and on the filled instrument.

TEX.R.CIV.P. 21 (a). "In order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion stating the specific grounds for the ruling he desired the court to make...." TEX.R.APP.P. 52(a). An appellant's failure to object in the trial court to a defective certificate of service waives the error on appeal. ***Wyatt v. Furr's Supermarkets, Inc.***, 908 S.W.2d 266, 270 (Tex. APP.-El Paso 1995, writ denied).

Although the certificate of service did not conform to the standard of Rule 21(a), Propst waived her objection to the deficiency by failing to object in the trial court. There is no showing on the certificate that a party or an attorney of record signed it. However, Propst did not object to the certificate of service or allege that she had insufficient notice. In fact, Propst filed a motion for rehearing in the trial court and quoted form portions of the Kingry Defendants' motion. Further, Propst filed a motion to reinstate requesting argument on the summary judgment motion because she had not received notice of the hearing form the court, but only from defendant's counsel. In neither her motion for rehearing nor her motion to reinstate did Propst complain to the trial court that she did not receive notice of the motion nor complain of any deficiencies in the certificate of service. We therefore overrule Propst's ninth point of error.

The trial court granted summary judgment in favor of the Kingry Defendants on January 1, 1995 and in favor of Dr. James on February 1, 1995. Propst filed a motion to reinstate on February 9, 1995, alleging that her cause was dismissed for want of prosecution due to her failure to respond to the Kingry Defendants' motion for summary judgment.

An appellate court may consider a *pro se* litigant's pleadings liberally. ***In re Caldwell***, 918 S.W.2d 9, 10 (Tex. App-Amarillo 1995, no writ). However, litigants who represent themselves must

comply with the applicable procedural rules. ***Mansfield State Bank v. Cohn***, 573 S.W.2d 181, 184-85 (Tex. 1978).

The trial court's summary judgment orders do not indicate that Propst's case was dismissed for want of prosecution. The court considered the pleadings and evidence and determined that the motions should be granted. Propst's case was not dismissed, but rather judgment rendered in favor of the Kingry Defendants and Dr. James.

Propst filed a motion to reinstate her cause. Although this motion was procedurally improper, the trial court could have considered her motion as a request for a new trial. However, even if we treat the motion to reinstate as a motion for new trial, Propst did not present evidence sufficient to warrant a new trial. Propst made allegations that she did not intentionally fail to respond to the Kingry Defendants' motion and that she had a good reason for her mistake. Propst also claimed that she did not discover the evidence prior to the court's grant of summary judgement, or that the new evidence would probably produce a different result at a new trial. Propst also alleged wrongdoing on the part of the trial judge. Propst presented no evidence in support of these empty allegations. We therefore cannot say that the trial court abused its discretion in refusing the grant Propst a new trial. Propst's first, fourth, and seventh points of error are overruled.

The judgment of the trial court is **affirmed.**

CHARLES HOLCOMB
Justice

Opinion delivered December 30, 1996
Panel consisted of Holcomb, J., and
Hadden, J. Ramey, Jr., C.J., not
participating

NOT PUBLISHED

TOM B. RAMEY, JR.
CHIEF JUSTICE

CHARLES HOLCOMB
JUSTICE

ROBY HADDEN
JUSTICE

COURT OF APPEALS
TWELFTH COURT OF
APPEALS DISTRICT

1517 WEST FRONT ST.
SUITE 354
TYLER, TEXAS 757207

CATHY S. LUSK
CLERK

SARA S. PATTESON
CHIEF STAFF

TELEPHONE
(903)593-8471

JANUARY 29, 1997

Ms. Jackie Lou Propst
5123 W. Hanover
Dallas, TX 75209

Mr. Stephen Russell Geotzmann
402 W. Wheatland Rd.
Suite 112
Duncanville, TX 75116

Hon. Joel J. Steed
5910 N. Central Expressway
Suite 650
Dallas, TX 75206

Mr. Douglas R. McSwane
Potter Law Firm
P.O.Box 359
Tyler, TX 75710

Mr. Michael E. Starr
Potter, Minton, Roberts, Davis, & Jones
P.O.Box 359
Tyler, TX 75710

RE: Court of Appeals Number: 12-95-00055-CV
Trial Court Case Number: 94-971-E
Style: Propst, Jackie Lou, Individually & Representative of the Estate of Elva Mae Chambers
v.
Kingry, Dr. Roy, et al

Dear Counsel:

You are hereby notified that in the above-described cause, the following descision and order was this day made and entered by this Court:

"Appellant's Motion for Rehearing having been duly considered, it is ORDERED that said motion be, and hereby is, Overruled."

Respectfully yours,
Cathy S. Lusk, Clerk

(APPENDIX B)

"s/Cathy McGraw".
By Cathy McGraw, Chief Deputy

THE ESTATE OF ELVA MAE CHAMBERS, JACKIE LOU PROPST, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ELVA MAE CHAMBERS, DECEASED; JACKIE LOU PROPST	&	IN THE COUNTY COURT
VS.	&	AT LAW IN AND FOR
DR. ROY KINGRY, THE UNIVERSITY OF TEXAS HEALTH CENTER, TYLER, SMITH COUNTY, TEXAS, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. SHAFER, DR. JAMES, DR. WILSON, GLORIA PHILLIPS, R.N. MARGIE FERGUSON, R.N. DENISE GREEN, R.N., MYRA LAMBERT, R.N., D. BOSTICK, R.N., C. HOUSE, R.N., AND G. WHEELER, R.N.	&	SMITH COUNTY, TEXAS

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

On the 19th day of January, 1995, came on to be heard the Motion for Summary Judgment of Defendants, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, DR. ROY KINGRY AND DR. DAVID GEORGE.

The Court, after examining the pleadings and summary judgment evidence, is of the opinion that the Motion is well taken and should be granted. The Court holds that DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, DR. ROY KINGRY and DR. DAVID GEORGE are entitled to summary judgment.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED, that Plaintiffs, the Estate of ELVA MAE CHAMBERS and JACKIE LOU PROPST, Individually and as Representative of the Estate of ELVA MAE CHAMBERS, take nothing against Defendants, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, DR. ROY KINGRY, and DR. DAVID GEORGE, and that said Defendants recover all costs in their

behalf expended of and from the plaintiffs for which let execution issue.

The Court further finds that the cause of action by Plaintiffs against these Defendants should be severed from the remainder of the cause of action herein and docketed under Cause No.95-132-E in the County Court at Law of Smith County, Texas, and by styled "The Estate of ELVA MAE CHAMBERS and JACKIE LOU PROPST, Individually and as Representative of the Estate of ELVA MAE CHAMBERS vs. DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, and DR. DAVID SHAFER".

IT IS FURTHER ORDERED that Plaintiffs' cause of action against Defendants be severed from this cause of action and entered under a separate docket number in Cause No.95-132-E, styled "The Estate of ELVA MAE CHAMBERS and JACKIE LOU PROPST, Individually and as Representative of the Estate of ELVA MAE CHAMBERS vs. DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, and DR. DAVID SHAFER" and filed in the County Court at Law of Smith County, Texas.

All relief not requested and not expressly granted herein is denied.

SIGNED this 19th day of January, 1995.

"s/ D. Devasto"
JUDGE PRESIDING

CAUSE NO. 94-04353-K

CARLOTA ROBINSON	& IN THE DISTRICT COURT DALLAS COUNTY, TEXAS
VS.	
MICHAEL R. MCCULLOUGH, D.O., JEFFREY C. THOMPSON, D.O., ELMER L KELSO, D.OL AND DALLAS/FT. WORTH MEDICAL CENTER	& 192ND DISTRICT COURT

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND SEVERANCE

On the ____ day of _____, 1995, came on to be heard the Motion for Summary Judgment and Severance of Defendant, Kyle James, M.D. and the Court being advised of the premises and after examining the pleadings and the summary judgment evidence, is of the opinion that it should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED and DECREED that Plaintiff, take nothing against Defendant, Kyle James, M.D. and that Defendant, Kyle James, M.D. recover all costs expended on his behalf and from Plaintiff, for which let execution issue.

It is further ORDEDERED that the judgment rendered in favor of the Defendant, Kyle James, M.D. is hereby severed from the above styled and numbered cause and make the subject of a separate action, and that is proceed as such to final judgment in this Court under the style of _____, and bear the docket number _____.

(APPENDIX D)

It is further ORDERED that the separate judgments be entered in the severed cause, each judgment to be final and to dispose completely of all of the issues between all parties in the respective suits.

All relief not expressly granted is hereby denied.
SIGNED this _____day of _____, 1994.

_____
JUDGE PRESIDING

CAUSE 94-971-E

THE ESTATE OF ELVA MAE CHAMBERS; JACKIE LOU PROPST, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ELVA MAE CHAMBERS, DECEASED; JACKIE LOU PROPST; TOMMIE SUE MASON; AND FREDDIE CARL LOLLAR	**&**	**IN THE COUNTY**
VS.	**&**	**SMITH COUNTY, TEXAS**
DR. ROY KINGRY; THE UNIVERSITY OF TEXAS HEALTH CENTER, TYLER, SMITH COUNTY, TEXAS; DR. DAVID GEORGE; DR. PETER SAN FELIPPO; DR. SHAFER; DR. JAMES; DR. WILSON; GLORIA PHILLIPS R.N., MARGIE FERGUSON, R.N., DENISE GREEN, R.N.; MYRA LAMBAERT, R.N.; D. BOSTICK R.N., C. HOUSE, R.N., AND G. WHEELER,R.N.	**&**	**COUNTY COURT-AT-LAW NO. 1**

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT AND SEVERANCE

On the 1st day of February, 1995, came on to be heard the Motion for Summary Judgment and Severance of Defendant, Kyle James, M.D. and the Court being advised of the premises and after examining the pleadings and the summary judgment evidence, is of the opinion that it should be GRANTED.

IT IS THEREFORE ORDERED, ADJUDGED, and

(APPENDIX E)

DECREED that Plaintiff, take nothing against Defendant, Kyle James, M.D. and that Defendant Kyle James, M.D. recover all costs expended on his behalf of and from Plaintiff, for which let execution issue.

It is further ORDERED that the separate judgments be entered in the severed cause, each judgment to be final and to dispose completely of all of the issues between all parties in the respective suits.

All relief not expressly granted is hereby denied.

SIGNED this ____ day of _____, 1994.

_____

JUDGE PRESIDING

CAUSE NO. 94-971-E

THE ESTATE OF ELVA MAE CHAMBERS, JACKIE LOU PROPST INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF ELVA AME CHAMBERS, DECEASED; JACKIE LOU PROPST	**& THE COUNTY COURT**
VS.	**& AT LAW IN AND FOR**
DR. ROY KINGRY, THE UNIVERSITY OF TEXAS HEALTH CENTER, TYLER, SMITH COUNTY, TEXAS, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. SHAFER, DR. JAMES, DR. WILSON, GLORIA PHILLIPS, R.N. MARGIE FERGUSON, R.N., DENISE GREEN, R.N., MYRA LAMBERT R.N., D. BOSTICK, R.N., C. HOUSE, R.N., AND G. WHEELER, R.N.	**& SMITH COUNTY, TEXAS**

ORDER DENYING MOTION FOR REHEARING

On the 31 day of January 1995, came on to be heard Motion for Rehearing of Plaintiff, JACKIE LOU PROPST.

The Court, after considering said Motion and examining the pleadings, is of the opinion that the Motion should be DENIED.

IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED, that Plaintiff JACKIE LOU PROPST'S Motion for Rehearing is DENIED.

All relief not requested and not expressly granted herein denied.

SIGNED this 31st day of January, 1995.

"s/Diane devasto".
JUDGE PRESIDING

(APPENDIX F)

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512)463-1312

July 31, 1997

Mr. Stephen Goetzmann
402 W. Wheatland Rd, Stout 112
Duncanville, TX 75116

Ms. Kay E. Ellington
Law Office of Joel Steed
5910 N. Central Expressway, Ste 650
Dallas, TX 75710

Mr. Douglas R. McSwane, Jr.
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P.O.Box 359
Tyler, TX 75710

Mr. Michael E Starr
Potter Minton Roberts
Davis & Jones
P.O.Box 359
Tyler, TX 75710

Mr. Joel J. Steed
Law Office of
Joel Steed
5910 N. Central Expwy.
Ste.650
Dallas, TX 75206

RE: Case Number 97-0188
Style: THE ESTATE OF ELVA MAE CHAMBER, JACKIE LOU PROPST, individually and as representative of the ESTATE OF ELVA MAE CHAMBERS, deceased, JACKIE LOU PROPST, individually.
v.
DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, and DR. KYLE JAMES

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced application for writ of error with the notation "Writ Denied".

Sincerely,
John T. Adams, Clerk

by "s/Michael C. Murphey"
Michael C. Murphey, Deputy

(APPENDIX G)

STEPHEN R. GOETZMANN,
ATTORNEY AT LAW
402 W. Wheatland Rd. Su. 112
Duncanville, Texas 75116
(972)709-8387
Fax(972)780-6189

August 7, 1997-12-24

Ms. Jackie Lou Propst
5123 W.Hanover
Dallas, Texas 75209

RE: Case No 97-0188; Propst v. Kingry, et al

Dear Ms. Propst:

Enclosed is a notice from the Supreme Court of Texas. They have denied the application for writ of error in the above matter. Should you have questions, please call me.

Sincerely,

"s/Stephen R. Goetzmann"
Stephen R. Goetzmann

Srg/cc
Enclosure

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512)463-1312

September 22, 1997

Mr. Stephen Goetzmann
402 W. Wheatland Rd, Suite112
Duncanville, TX 75116

Ms. Kay E. Ellington
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5910 N. Central Expressway, Ste 650
Dallas, TX 75710

Mr. Douglas R. McSwane, Jr.
Potter Minton Roberts Davis & Jones
P.O.Box 359
Tyler, TX 75710

Mr. Michael E Starr
Potter Minton Roberts
Davis & Jones
P.O.Box 359
Tyler, TX 75710

Mr. Joel J. Steed
Law Office of
Joel Steed
5910 N. Central Expwy.
Ste.650
Dallas, TX 75206

RE: Case Number 97-0188
Style: THE ESTATE OF ELVA MAE CHAMBER, JACKIE LOU PROPST, individually and as representative of the ESTATE OF ELVA MAE CHAMBERS, deceased, JACKIE LOU PROPST, individually.
v.
DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, and DR. KYLE JAMES

Dear Counsel:

Today, the Supreme Court of Texas granted the motion for extension of time to file motion for rehearing in the above numbered and referenced case. Motion for rehearing is due to be filed in this office on or before September 2, 1997. (Please do note that the motion for rehearing was received, and filed as of September 2, 1997.)

Sincerely,
(APPENDIX H)

BEST AVAILA

John T. Adams, Clerk

by "s/Michael C. Murphey"
Michael C. Murphey, Deputy

kie Lou Propst

BLE COPY

THE SUPREME COURT OF TEXAS
Post Office Box 12248
Austin, Texas 78711
(512)463-1312

September 25, 1997

Mr. Stephen Goetzmann
402 W. Wheatland Rd, Suite112
Duncanville, TX 75116

Ms. Kay E. Ellington
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Mr. Michael E Starr
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P.O.Box 359
Tyler, TX 75710

Mr. Joel J. Steed
Law Office of
Joel Steed
5910 N. Central Expwy.
Ste.650
Dallas, TX 75206

RE: Case Number 97-0188
Style: THE ESTATE OF ELVA MAE CHAMBER, JACKIE LOU PROPST, individually and as representative of the ESTATE OF ELVA MAE CHAMBERS, deceased, JACKIE LOU PROPST, individually.
v.
DR. ROY KINGRY, DR. DAVID GEORGE, DR. PETER SANFELIPPO, DR. DAVID R. SHAFER, and DR. KYLE JAMES

Dear Counsel:

Today, the Supreme Court of Texas overruled petitioner's motion for rehearing of the application for writ of error in the above styled case.

Sincerely,

John T. Adams, Clerk
(APPENDIX I)

by "s/Michael C. Murphey"
Michael C. Murphey, Deputy

cc: Jackie Lou Propst

"June 26"

Hold off
Do Nothing
Doug McSwane
will write a letter
of explanation--
6-28-97

(APPENDIX J)